
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

| | | |
|---------------------------------------|---|------------------------|
| CREEDON CONTROLS, INC., |) | |
| |) | |
| Plaintiff |) | |
| |) | C.A. No. 05-CV-300-JJF |
| v. |) | |
| |) | |
| BANC ONE BUILDING |) | |
| CORPORATION, an Illinois corporation, |) | |
| and FOREST ELECTRIC |) | |
| CORPORATION, a New York Corporation, |) | |
| |) | |
| Defendant |) | |

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**SUPPLEMENTAL APPENDIX OF FOREST ELECTRIC CORP.
IN SUPPORT OF ITS MOTION FOR
PARTIAL SUMMARY JUDGMENT AND IN RESPONSE TO MOTION OF
BANC ONE BUILDING CORPORATION**

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Date: August 8, 2006

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[1] subcontracts on the Banc One CDC I and CDC II
[2] projects."

[3] Can you describe that conversation?

[4] A: I mean, I don't remember it

[5] specifically, but what it looks like to me is that

[6] this document was transmitted to Tom Keane by Juliane

[7] Lynch.

[8] I had a conversation with Tom at some

[9] point between these two dates, March 29th and July —

[10] excuse me, April 12th, and at that point I was

[11] directed by Tishman to use this document and this is

[12] a confirming e-mail.

[13] Q: And what were the details of that

[14] conversation with Tom?

[15] A: It's the question, "Is the document

[16] that we sent to you okay to use for the trade

[17] contractors?"

[18] Q: So, you don't recall any substantive

[19] comments with Tom about the terms of the contract?

[20] A: No.

[21] Q: Do you ever remember Tom authorizing

[22] Forest Electric to act as an agent for Banc One?

[23] A: I mean, a conversation surrounding it

[24] or just a statement? There was a statement: "You are

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[1] acting as an agent for the bank."

[2] Q: There was a statement?

[3] A: Yes.

[4] Q: Who made that statement?

[5] A: You know, it may have come up in — it

[6] would have been made by Tom Keane. I don't know the

[7] exact time it was stated, but it would have been in

[8] the context of perhaps signing a document or

[9] confirming a change order.

[10] Q: Was this statement in writing?

[11] A: No.

[12] Q: Is there any statement in writing from

[13] Tishman to Forest stating Forest should act as agent

[14] for the bank?

[15] A: Other than acceptance of the agreement

[16] that we ultimately signed, the master agreement that

[17] we signed, that I believe states that.

[18] Q: And the master agreement, what do you

[19] mean by that?

[20] A: I mean the agreement that engages

[21] Forest as the trade manager for the bank, for the

[22] electrical trades on the Banc One CDC projects.

[23] Q: So, to your knowledge, if Forest

[24] contracts with the bank, it gives Forest permission

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[1] to act as agent for the bank?

[2] A: Yes.

[3] Q: And did any representative of Banc One

[4] Building Corporation ever authorize Forest to act as

[5] an agent?

[6] MR. BRADLEY: Objection to the

[7] form.

[8] THE WITNESS: That's my

[9] understanding based on the agreement.

[10] BY MR. CHOA:

[11] Q: Based on which agreement?

[12] A: On the agreement authorizing Forest to

[13] proceed as the trade manager for the electrical

[14] trades.

[15] Q: Besides that document, you never saw

[16] anything else in writing from the bank to Forest

[17] authorizing Forest to act as agent?

[18] MR. BRADLEY: Objection. You mean

[19] other than what's in these exhibits we've

[20] already marked?

[21] MR. CHOA: Well, actually Paul is

[22] saying that he thinks that's contained in

[23] the agreement between Forest and Tishman.

[24] We haven't marked any of those —

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[1] these agreements have all been proposed

[2] subcontracts between Forest and its sub

[3] trades.

[4] MR. BRADLEY: I know — well, but

[5] some of these e-mails are writings that

[6] go to Tishman, is my point.

[7] MR. CHOA: Oh, okay, I see what

[8] you're saying.

[9] BY MR. CHOA:

[10] Q: Besides the exhibits we've — and I'm

[11] actually talking about from the bank now, and I

[12] haven't seen any e-mails to or from the bank

[13] introduced here today.

[14] Is there any writing from the bank,

[15] other than this agreement that we've discussed,

[16] authorizing Forest to act as the bank's agent?

[17] A: Not that I'm aware of.

[18] Q: Did you have any discussions with any

[19] representatives of the bank regarding the agency of

[20] Forest?

[21] MR. BRADLEY: You mean anyone

[22] other than he's already talked about.

[23] MR. CHOA: Right.

[24] MR. BRADLEY: The problem is,

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[1] THE WITNESS: Just that they had
[2] represented that there is an issue, and I
[3] hoped that we could resolve the issue
[4] without going down this path.

[5] BY MR. CHOA:

[6] Q: How would you have liked to resolve
[7] the issue?

[8] MR. BRADLEY: Objection to the
[9] form.

[10] THE WITNESS: Well, we were having
[11] discussions with Creedon, and we had
[12] hoped that there was some course of
[13] action that could have resolved —
[14] satisfied their concerns and not had to
[15] become a legal claim.

[16] MR. CHOA: Okay.

[17] BY MR. CHOA:

[18] Q: What kind of course of action did you
[19] contemplate at the time?

[20] A: Well, in discussions with the bank
[21] over this issue, one of the courses of action was to
[22] give Creedon some additional work and an opportunity
[23] to help their financial status.

[24] Q: Did Forest Electric ever do that?

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[1] A: We did.

[2] Q: I just want to back for a little bit
[3] and then we'll be done.

[4] You testified earlier that your
[5] understanding that Forest was authorized to act as
[6] agent for Banc One came from Forest's contract giving
[7] it the responsibility to be the electrical trade
[8] manager; is that correct?

[9] MR. BRADLEY: I'm going to object
[10] to form. I don't think that's what his
[11] testimony was.

[12] MR. CHOA: Okay, we can —

[13] MR. BRADLEY: Well, whatever it
[14] was, it stands, but you can answer the
[15] question, if you can.

[16] THE WITNESS: I think that
[17] formalized it. That formalized it.

[18] BY MR. CHOA:

[19] Q: And did your understanding come from
[20] your own reading of the contract, or were you told
[21] that?

[22] MR. BRADLEY: I'm going to object
[23] to the form.

[24] THE WITNESS: (No response)

[1] MR. CHOA: Do you understand the
[2] question?

[3] THE WITNESS: Yes.

[4] THE WITNESS: It's hard to say
[5] that I was told, but yes, I believe that
[6] I was told.

[7] Can I point to a point in time
[8] where someone said "You're agent for the
[9] bank," no, but it was — it became clear.

[10] MR. CHOA: Okay.

[11] THE WITNESS: And ultimately
[12] formalized by the agreement that was
[13] signed.

[14] BY MR. CHOA:

[15] Q: Do you know who would have told you?

[16] A: Again, it just became apparent during
[17] the course of the job.

[18] Q: And when you say it became apparent
[19] during the course of the job, is that from your
[20] interactions with Forest people?

[21] A: No, it was interaction between the
[22] bank, Tishman and Forest —

[23] Q: And these were — I'm sorry, go ahead.

[24] A: Onsite.

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[1] Q: And these were interactions that you
[2] personally witnessed?

[3] A: Yes.

[4] Q: So, while the express authorization
[5] might never have happened, from observing their
[6] behavior is how you came to the understanding that
[7] Forest was able to act as agent for the bank?

[8] MR. BRADLEY: Objection to the
[9] form.

[10] THE WITNESS: Again, I don't know
[11] that it's a specific point in time, but
[12] you're us.

[13] In other words, the bank is
[14] saying, "You are us. You're acting as
[15] agent for us," and of course that was how
[16] I acted, with the bank's interests.

[17] BY MR. CHOA:

[18] Q: And the bank was saying this to you?

[19] A: Yes.

[20] Q: Is it possible the bank was saying
[21] those type of things because the bank was the
[22] ultimate owner of the building and whatever was built
[23] would belong to the bank?

[24] A: No, it was clearly a direction as far

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[1] as how we were to relate to the trade contractors on
[2] the job.

[3] Q: And who from the bank told that to
[4] you?

[5] A: Karl Auwarter would be the person that
[6] I would get that information from.

[7] Q: Do you remember any specific
[8] conversations with Karl Auwarter?

[9] A: And of course it would be reinforced
[10] by discussions with Tom Keane of Tishman. Specific
[11] conversations, no.

[12] Q: So, you don't remember any specific
[13] point in time where Karl Auwarter said to you Forest
[14] Electric should act as the bank's agent?

[15] A: No.

[16] Q: And did you ever see any specific
[17] documents from Karl Auwarter to you saying that?

[18] A: No.

[19] Q: Was there anyone else at the bank that
[20] you had these conversations with?

[21] A: He was the principal person I would
[22] interact with on the site from the bank.

[23] Q: Did you ever ask to see documentation
[24] to support his position?

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[1] A: Well, there was no documentation. We
[2] were six months into the project by the time the
[3] agreement was formalized in writing.

[4] Q: And at that point did you ask to see
[5] the formal agreement?

[6] A: Yes, I've seen it.

[7] Q: And to your knowledge, in that
[8] agreement the bank authorizes Forest to act as agent?

[9] A: To my understanding.

[10] Q: And that's from your own reading of
[11] the contract?

[12] A: Among the other things we've discussed
[13] and my understanding and reading of the contract,
[14] yes.

[15] Q: I just want to get — nobody said,
[16] "Hey, Paul, this provision right here in this
[17] contract, this means that Forest can act as agent for
[18] the bank"?

[19] A: No, no one said that.

[20] Q: Sorry to skip around. I have a
[21] follow-up.

[22] You had said earlier, on day one of
[23] your deposition, that Creedon kept its picnic tables
[24] in the administration area?

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[1] A: Yes.

[2] Q: And that that was just symbolic of
[3] their overall problems on the job. What did you mean
[4] by that?

[5] A: I just think it shows a lack of
[6] control and discipline.

[7] Q: Was that an ongoing problem for
[8] Creedon?

[9] A: Like I said, I think it was symbolic
[10] of the way that they were running the job, and
[11] perhaps indicative of their lack of control over the
[12] workforce.

[13] Q: Was this something that you observed
[14] directly, lack of control?

[15] A: No, I am inferring it from the
[16] information that they have given us after the fact.

[17] MR. CHOA: That's everything I
[18] have.

[19] MR. BRADLEY: We'll read and sign.

[20] (The deposition was concluded at
[21] 7:20 p.m.)

[22]

[23]

[24]

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